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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,465	03/28/2001	Michael K. Weibel	1690-P02146US1	3425

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,465

Applicant(s)

WEIBEL, MICHAEL K.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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In the response filed Nov. 5, 2003, applicant requests for a reconsideration of the restriction requirement based on the argument that the film as claimed can only be made by the process of invention I. The request is respectfully denied because the restriction is deemed proper for the reason set forth in previous office actions. Applicant has not submitted any evidence to show that film with protuberances can only be made by the claimed method. As shown by the new prior art to Anderson, film having protrusions on the surface can be made by other method.

The 103 rejection of claims 9-20 over the Chen et al and Tomasula references is hereby withdrawn.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 15 and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.

Anderson discloses a barrier film which is used to package food products. The film is provided with a textured surface and is formed of edible polymeric material. Edible films are formed from proteins, cellulose, starches, dextrans, plant hydrocolloids, waxes, fat products, monoglycerides or their derivatives or mixtures of these materials. Only one of the surface of the film is provided with texturing. For instance, the inner surface of the film is provided with a series of elongated, substantially linear protrusions on its surface. (see col. 3 lines 40-42, col. 5 lines 23-45, col. 6 lines 23-60)

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Anderson discloses an edible film having protrusions on one of the surface. The protrusions are the same as the claimed protuberances. The film can contain a mixtures of materials cited above. The material includes monoglycerides or fat products which are considered lipid material. Thus, lipid is incorporated in the film. Since the film is used to package food product, a combustible substance is integrated with the edible film. The film differs from the claimed film in the way in which it is made. However, determination of product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (see In Re Thorpe, 227 USPQ 964)

Claims 10-14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Tomasula.

Anderson does not disclose parbaked dough piece such as pizza crust, cheese or using the film as barrier between heterogeneous components and coating the film with lipid, lecithin or wax.

Tomasula discloses an edible film. Additives such as plasticizer, lubricants, extenders, preservatives , antioxidant and colorant are added to the film. (See columns 10-11)

Anderson discloses the film is used as a barrier. The purpose of a barrier is to protect the food product from external matter such as moisture, impurities, moisture migration between different components etc... It would have been obvious to use the edible film of Anderson on any food product including pizza , cheese or heterogeneous food components having different water content when it is desired to protect such foods from the environment which can cause unfavorable consequence in the food product.

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For example, it would have been obvious to use the film as barrier layer in a pizza product to prevent moisture migration from the topping and sauce to the crust; the moisture migration will lead to sogginess in the crust. It would also have been obvious to coat the film with lecithin, waxes or lipid to function as lubricant so that the film can be easily released from the food products. Such additives are well known to be used in edible film as shown by Tomasula. Using additives for their art-recognized function would have been within the skill of one in the art.

Applicant's arguments with respect to claims 9-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

January 21, 2004


LIEN TRAN
PRIMARY EXAMINER

Group 1700